IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 146 of 2007()

CP.24/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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PETITIONERS:

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1. DHARANEEDHARAN.P.,
RESIDING AT NETHAJI COLONY,
THICHAMBARAM,
THALIPARAMBA,
(FORMERLY SECRETARY,
TALIPARAMBA CO-OPERATIVE HOUSE
BUILDING SOCIETY,
THALIPARAMBA.

2. K.B. BALAN,
S/O. CHIRUKANDAN,
PARIYARAM POST,
TALIPARAMBA TALUK.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. MADAN KOMAN,
S/O. KUNHAMBU, AGED 59 YEARS,
VENGARA P.O., VENGARA,
TALIPARAMBA TALUK,
KANNUR DISTRICT.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 146 OF 2007

Dated this the 17th day of January, 2007

ORDER

The petitioners are accused in a prosecution under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short `the Act'). Cognizance has been taken by the learned Magistrate on the basis of a private complaint filed by the 2nd respondent. On the complaint filed by the 2nd respondent, the police had conducted an investigation and referred the complaint as false. It is thereafter that a private complaint was filed by the 2nd respondent. The learned Magistrate had recorded the statements of the witnesses and had later issued process under Sec.204 of the Cr.P.C. to the petitioners. The petitioners have been directed to appear before the learned Magistrate now to answer the allegation under Sec.3(1)(x) of the Act.

2. The learned counsel for the petitioners submits that cognizance has been taken without really appreciating the materials on record. It is transparently evident that the

allegations are made without any substance. The learned counsel for the petitioners submits that the 2nd respondent is actuated by mala fides and he has made a vexatious allegation against the petitioners. In these circumstances, the allegation being false and vexatious, cognizance taken may be set aside invoking the powers under Sec.482 of the Cr.P.C. This is primarily the prayer.

3. The learned counsel for the petitioners then submits that the vital ingredients of Sec.3(1)(x) of the Act have not been revealed.

4. I am unable to agree with the learned counsel for the petitioners on either of these two contentions. Whether the allegations are false or true cannot obviously be decided by this Court with the materials presently available at this stage under Sec.482 of the Cr.P.C. Suffice it to say that I am not persuaded, on the materials available, to sail to a conclusion that the allegations are false and mala fide and that the powers under Sec.482 of the Cr.P.C. deserve to be invoked on that ground.

5. The next contention is about the ingredients of the offence alleged. I have gone through the complaint as also the sworn statements of the witnesses recorded, copies of which

have been produced before me. I do not express any final authentic opinion on the disputed contentions. Suffice it to say that I am not persuaded to agree that the allegations raised are such that even when accepted in toto they cannot reveal the offence alleged.

6. I do not, in these circumstances, find any reason to invoke the powers under Sec.482 of the Cr.P.C. and quash the proceedings.

7. The learned counsel for the petitioners submits that there may be a direction to the learned Magistrate to release the petitioners on bail when they appear before the learned Magistrate. Of course, the learned Magistrate is to exercise his discretion. But, in the facts and circumstances of this case, I cannot envisage the possibility of such discretion being exercised against the petitioners. No court can afford to ignore the fact that the police, after investigation, had filed a report stating that the allegations raised are false and incorrect. This Court has repeatedly held in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1)

K.L.D. (Cri) 250) that notwithstanding the fact that the offences are triable by a Court of Session, the Magistrate is obliged to consider the application for bail on merits. In the facts and circumstances of this case, I am satisfied that the interests of justice will be served eminently by issue of a direction to the learned Magistrate to consider the application for bail to be filed by the petitioners on their surrender before the learned Magistrate – of course, after giving sufficient prior notice to the Prosecutor-in- charge, expeditiously – on the date of surrender itself and in the light of the decisions referred above.

8. In the result, this Crl.M.C. is dismissed with the above observations.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge